
Docket No. BAR-95-12

II

DECISION AND ORDER

ARRON E. BUDNITZ

The basis for disbarment was a violation of New Hampshire Bar Rule 8.1(a) which states, in part: “[A] lawyer in connection with a . . . disciplinary matter shall not: (a) knowingly make a false statement of material fact . . .” N.H.R. Prof. Conduct 8.1(a). A referee had found by clear and convincing evidence that Mr. Budnitz had knowingly lied to a grand jury and that he had perpetuated this lie in his response to a professional conduct complaint. The New Hampshire Supreme Court Committee on Professional Conduct recommended disbarment for the respondent. The Supreme Court agreed:

Lying to or attempting to mislead the committee in an attempt to cover up [misdeeds] evidences serious disregard for the institutions that respondent as an attorney has sworn to protect and uphold, and disbarment is the only sanction that will truly protect the public and maintain public confidence in the Bar.

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under these circumstances. Fitzpatrick's Case, No. 132 N.H. 211, 217, 566 A.2d 157, 161 (1989).

The Supreme Court rejected respondent's attempts to characterize the statements at issue as statements of "belief" or "opinion," noting that he "stands accused of knowingly making a false statement of material fact."

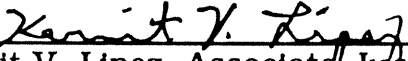
In response to the petition of the Board that the court impose the reciprocal discipline of disbarment upon Mr. Budnitz in Maine, Mr. Budnitz has filed a motion to dismiss the petition, arguing again that any discipline imposed for his statements of "belief" or "opinion" denies his first amendment rights of free speech. This argument is meritless. Mr. Budnitz was disbarred in New Hampshire because the Supreme Court of New Hampshire concluded that a reasonable person could reach the conclusion of the referee that Mr. Budnitz falsely set forth statements of "belief" or "opinion" about certain events, knowing the true version of those events and dissembling with his qualified account. Such dissembling does not implicate any first amendment rights. The Motion to Dismiss is denied.

Although Mr. Budnitz argues that certain procedural deficiencies in the New Hampshire proceedings, and alleged infirmities of proof in the finding of misconduct, justify a denial of the Board's request for reciprocal discipline, the court concludes that there were no such deficiencies or infirmities. Mr. Budnitz had clear notice of the substance of the allegation that he had violated section 8.1(a) of the New Hampshire Bar Rules. He had an opportunity to respond to that charge at a hearing before a referee. The

referee had an adequate basis for the finding that Mr. Budnitz had perpetuated false testimony in the bar disciplinary proceeding.

Given these conclusions, the Court agrees with the Board that the reciprocal discipline of disbarment in Maine is essential to protect the public and maintain public confidence in the Bar. Accordingly, it is ORDERED that Arron E. Budnitz is disbarred forthwith from the practice of law in Maine. Consistent with the ruling of the New Hampshire Supreme Court, Mr. Budnitz may petition for reinstatement to the practice of law in Maine at the end of two years, subject to all applicable requirements of the Maine Bar Rules.

Dated: February 20, 1996


Kermit V. Lipez, Associate Justice
Maine Supreme Judicial Court